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**USTR Announces Results of Annual "Super 301" Review:
Korean Auto Barriers Identified as Priority Foreign Country Practice; and
New WTO Disputes Launched on Export Subsidies and Market Access Barriers**

United States Trade Representative (USTR) Charlene Barshefsky announced today that USTR has identified Korea's barriers to imported automobiles as a priority foreign country practice under the "Super 301" provisions of U.S. trade law.

"Although some progress was made during recent bilateral negotiations to improve market access in Korea for foreign automobiles," said Ambassador Charlene Barshefsky, "Korea was not prepared to undertake the reforms that are necessary for real opening of their autos market. We continue to hope that we can reach an agreement with Korea that will effectively address U.S. concerns." Korea is the third largest exporter of automobiles. However, in spite of the 1995 U.S.-Korea agreement on autos, imported passenger vehicles represented less than one percent of the Korean market in 1996.

Ambassador Barshefsky also announced today that USTR will take enforcement action involving four other countries' trade practices, challenging them under the World Trade Organization (WTO) dispute settlement process. Three of these WTO cases specifically target foreign government circumvention of rules on export subsidies. With these actions, the United States will have filed 35 complaints with the WTO since it was established less than three years ago.

"Enforcement of international trade agreements and U.S. trade laws underpins our entire approach to trade -- and is critical to our objective of building on the trade agreements we have reached so far to open markets further and expand trade," Ambassador Barshefsky stated. On more than 70 occasions the Clinton Administration has used the trade law tools and dispute settlement mechanisms at its disposal to enforce U.S. rights, outlined in the attached Fact Sheet.

In this year's report, the Trade Representative underscored the importance of fast track procedures for achieving trade expansion goals. "Keeping America growing and creating good high-wage jobs by tearing down foreign barriers to American goods and services continues to be President Clinton's top trade expansion priority. For this reason the President has asked Congress to renew fast track procedures to negotiate tough new trade agreements," the Trade Representative stated. Fast track procedures strengthen the President's ability to eliminate trade barriers and unfair trade restrictions in export areas where we lead, such as in agriculture, telecommunications, medical equipment, environmental technology and services, and the creative power of our entertainment and software industries.

The specific Korean practices of concern with respect to automobiles include an array of cumulative tariff and tax disincentives that disproportionately affect imports; onerous and costly auto standards and certification procedures; auto financing restrictions; and a climate of bias against imported vehicles that Korean officials have not effectively addressed. While some of these barriers were addressed in the 1995 bilateral agreement, implementation of that agreement has been disappointing, especially as new practices have been introduced that undermine the 1995 agreement.

In launching the new WTO cases, Barshefsky said, "One of our top priorities during the Uruguay Round of trade negotiations was to impose greater discipline on the use of subsidies by foreign governments. This year, consistent with the Administration's strategic enforcement strategy, we are using the effective tool of WTO dispute settlement in tandem with Section 301 of the Trade Act to challenge these trade-distorting practices." Two of the cases involve agricultural export subsidies that affect U.S. exports of dairy products and appear to circumvent the rules of the WTO Agreement on Agriculture. She added, "We will not stand by while other governments backslide on their commitments in the agricultural sector, where the United States is a top global competitor."

The four WTO enforcement actions involve:

- **Japan - market access barriers to fruit.** USTR will initiate a section 301 investigation and, in that context, request the establishment of a WTO panel to challenge the Japanese government requirement of separate efficacy testing of certain quarantine treatments for each variety of imported fruit, even where the same treatment has been accepted by Japan as effective for another variety. Although the fruit of immediate export concern is apples, Japan's requirement operates as a significant import barrier to nectarines, cherries, and other fruits that are of export interest to the United States. The United States and Japan have already completed consultations on this matter pursuant to WTO dispute settlement procedures, so the United States will proceed directly to request a panel.

- **Canada - export subsidies and import quotas on dairy products.** USTR will invoke WTO dispute settlement procedures in the context of a section 301 investigation to challenge practices that subsidize exports of dairy products from Canada, and Canadian implementation of its import quotas on milk. The U.S. dairy industry has petitioned USTR to initiate this investigation on the grounds that both of these practices are inconsistent with Canada's WTO obligations and adversely affect U.S. exports.
- **EU - circumvention of export subsidy commitments on dairy products.** USTR also will invoke WTO dispute settlement procedures in the context of a section 301 investigation to challenge practices by the EU that circumvent the EU's commitments under the WTO to limit subsidized exports of processed cheese and adversely affect U.S. exports to third markets. The EU is counting these exports against its limits on powdered milk and butterfat to avoid the limits on subsidies to cheese. USTR will also closely monitor EU compliance with its WTO agricultural subsidy commitments on all other agricultural products.
- **Australia - export subsidies on automotive leather.** Following bilateral and multilateral consultations, Australia agreed to eliminate export subsidies for leather used in automobiles. However, Australia's subsequent package of assistance for its industry (comprised of a sizeable loan and grant), has raised similar concerns regarding consistency with WTO subsidies rules. While some progress has been made in recent months, these concerns have not yet been adequately addressed. Thus, USTR will invoke WTO dispute settlement procedures, but remains hopeful that a solution satisfactory to both countries can be reached during consultations.

Other Enforcement Priorities

Since 1993, the Administration has vigorously enforced its rights by deploying all available trade enforcement tools at its disposal. It has: launched 21 Section 301 investigations into foreign unfair trade practices; used the "Special 301" review of intellectual property rights protection to secure improved protection in at least ten major foreign markets; used U.S. trade laws to gain compliance with telecommunications trade agreements with three major trading partners and to address discrimination in foreign government procurement practices in five cases; and invoked the dispute settlement procedures of the WTO in 32 cases to protect the interests of U.S. producers and manufacturers.

This year's Super 301 report also identifies a number of areas where the Administration is applying U.S. trade laws, WTO dispute settlement procedures, and other provisions to address foreign trade barriers adversely affecting U.S. exports. For example, during the past year, USTR has invoked WTO dispute settlement procedures to challenge a wide variety of foreign government practices, covered by the *broad range* of agreements administered by the WTO, seeking to enforce the rules on tariffs, agriculture, services, intellectual property rights, antidumping measures, and sanitary and phytosanitary measures. Those complaints involve:

- **Argentina's** import duties on footwear, textiles, and apparel that exceed the maximum to which Argentina is committed under WTO tariff rules;

- licensing requirements in **Belgium** that discriminate against U.S. suppliers of commercial telephone directory services;
- **Brazilian** government measures that give certain benefits to manufacturers of motor vehicles and parts, conditioned on compliance with average domestic content requirement, trade-balancing and local content requirements with regard to inputs;
- the failure of **Denmark** to provide adequate measures to enforce intellectual property rights;
- reclassification by the **European Union, the United Kingdom, and Ireland** of certain computers and computer-related equipment to different tariff categories with higher tariff rates;
- import restrictions on more than 2700 agricultural, textile and industrial products imposed by **India** for which India can no longer claim a justification for balance-of-payments reasons;
- **Indonesia's** program granting preferential tax and tariff benefits to producers of automobiles based on the percentage of local (Indonesian) content of the finished automobile;
- **Ireland's** failure to expeditiously bring its copyright laws into compliance with the WTO agreement on intellectual property rights;
- **Japan's** barriers to market access for photographic film and paper, and barriers to distribution and retail services in Japan
- **Korea's** taxes on Western-style distilled spirits that are higher than those assessed on the traditional Korean-style spirit *soju*;
- an antidumping action by **Mexico** of high-fructose corn syrup imports from the United States that does not conform to WTO procedures.
- a licensing system in **the Philippines** that discriminates against U.S. exports of pork and poultry; and
- the failure of **Sweden** to provide adequate measures to enforce intellectual property rights.

Bilateral Priorities

The Super 301 report also discusses priorities in addressing bilaterally a number of serious problems in trade with Japan, China, and Korea. It reports on the status of bilateral negotiations with Japan on market access for telecommunications, autos, auto parts, flat glass, paper, and paper products, which are priority issues on the bilateral U.S.-Japan agenda. It also highlights the priority that the Administration places on negotiations with China, bilaterally and in the context of negotiations on the accession of China to the WTO, where the United States is seeking the elimination of China's multiple and overlapping barriers to U.S. exports of industrial goods, agricultural products and U.S. services. With respect to Korea, the Administration's trade

strategy is premised on the assumption that Korea will take actions and accept the responsibilities commensurate with its new international position as a developed nation. In addition to identifying market access barriers to autos as a priority practice, the report discusses the Administration's goals of achieving systemic changes to trade-restricting procedures and rules in Korea, including those affecting trade in agricultural goods, food and cosmetics, and steel.

"The Administration is increasingly concerned that Japan's progress in opening its market has slowed," the Trade Representative stated, adding: "Market access problems persist and U.S. companies in a wide range of sectors continue to face serious impediments that hinder their ability to compete in the Japanese market. These barriers include a closed distribution system, nontransparent regulations, discriminatory procurement policies, and restrictive business practices."

The report warns that the deregulatory measures implemented by the Government of Japan in the sectors included in the Enhanced Deregulation Initiative agreed to by President Clinton and Prime Minister Hashimoto at the G-8 Summit last June -- including telecommunications, housing, pharmaceuticals/medical technology, and financial services -- will serve as "early indications of the seriousness of Japan's commitment to deregulation."

In addition, the report identifies a number of technical barriers to trade -- such as standards, certification and testing requirements -- and sanitary and phytosanitary measures affecting agricultural products that require special attention and that may warrant enforcement action in the future, particularly measures imposed by the European Union.

WTO Successes

An Appendix to the report describes the successful outcomes achieved by the United States in WTO dispute settlement proceedings during the past year, either through favorable rulings or satisfactory settlements. The United States has won the first five cases that it has taken through the panel process:

- **Japan - liquor taxes.** The United States -- joined by the EU and Canada -- successfully challenged a discriminatory Japanese tax scheme that placed high taxes on whisky, vodka, and other Western-style spirits, while applying low taxes to a traditional Japanese spirit (shochu). This was an important victory for the U.S. distilled spirits industry, whose exports to Japan have reached \$100 million per year even in spite of the heavy Japanese taxes. Japan has already enacted legislation that is a major step toward eliminating the problem. The excise taxes on whisky and other brown spirits are being dramatically reduced, starting in October 1997, and the excise tax on shochu will be increased. The result will be a drastic tax cut for our brown spirits exports.

- **Canada - restrictions on magazines.** The United States successfully challenged a recently enacted Canadian law that placed a high tax on American magazines containing advertisements directed at a Canadian audience. This tax, which was the latest in a series of Canadian government measures designed to protect the Canadian magazine industry from U.S. competition, was specifically calculated to put the Canadian edition of *Sports Illustrated*, published by the Canadian subsidiary of Time Warner, Inc., out of business. By ruling in favor of the United States, this case makes clear that WTO rules prevent governments from using 'culture' as a pretense for discriminating against imports.
- **EU - banana imports.** The United States joined Ecuador, Guatemala, Honduras, and Mexico in challenging an EU import program that gave French and British companies a big share of the banana distribution services business in Europe that U.S. companies had built up over the years. Ruling against the EU, the WTO panel and Appellate Body found that the EU banana import rules violated both the General Agreement on Trade in Services and the General Agreement on Trade in Goods by depriving U.S. banana distribution services companies and Latin American banana producers of a fair share of the EU market.
- **EU - hormone ban.** Both the United States and Canada challenged Europe's ban on the use of six hormones to promote the growth of cattle, and a WTO panel agreed that the EU has no scientific basis for blocking the sale of American beef in Europe. This is a sign that the WTO dispute settlement system can handle complex and difficult disputes where a WTO member attempts to justify trade barriers by thinly disguising them as health measures. The panel affirmed the need for food safety measures to be based on science, as they are in the United States. In addition to potentially affecting over \$100 million in U.S. beef exports annually, this ruling sets an important precedent that will act to protect other U.S. exporters from unscientific and unjustified trade barriers in the future.
- **India - patent law.** The United States recently obtained a panel ruling against India for failing to provide procedures for filing patent applications for pharmaceuticals and agricultural chemicals, as required by the WTO agreement on intellectual property protection. Besides serving notice that the United States expects all WTO members, including developing countries, to carry out their WTO obligations concerning intellectual property rights, this case also demonstrates that the WTO dispute settlement mechanism can play an important role in protecting American rights and interests in this field.

In addition, the WTO dispute settlement rules have made it possible to enforce WTO agreements without ever having to reach a panel decision. The fact that the WTO can and will authorize the United States to retaliate pays off in earlier settlements opening markets for more U.S. exports. During the past year the United States has used the WTO procedures to obtain favorable settlements in some important cases:

- **Portugal - patent law.** After the United States requested WTO consultations, Portugal agreed to revise its patent law to provide a 20-year term to old, as well as new, patents, as required by the WTO agreement on intellectual property rights.
- **Pakistan - patent law.** After the United States requested the establishment of a WTO panel to

enforce the WTO intellectual property rights agreement, Pakistan implemented the requirements of that agreement to provide procedures for filing patent applications and preserving exclusive marketing rights to protect pharmaceuticals and agricultural chemicals.

- **Turkey - film tax.** The United States has used the WTO dispute settlement process to convince the Government of Turkey to eliminate discriminatory tax treatment currently given to box office receipts from exhibition of foreign films. Turkey has agreed to change its practice.
- **Hungary - agricultural export subsidies.** The United States, joined by Argentina, Australia, Canada, New Zealand, Thailand, and Japan, used the WTO dispute settlement procedures to address Hungary's lack of compliance with its commitments on agricultural export subsidies. The result was a settlement agreement in which Hungary will have to cut its current export subsidy levels by more than 65%.

Background: Super 301

On March 3, 1994, the President signed Executive Order 12901 reinstating for calendar years 1994 and 1995 the "Super 301" provisions of the Omnibus Trade and Competitiveness Act of 1988 (section 310 of the Trade Act of 1974, as amended). On September 27, 1995, the President amended Executive Order 12901 to extend it to calendar years 1996 and 1997.

The executive order requires that within six months of the submission of the annual National Trade Estimate Report, the USTR shall review U.S. trade expansion priorities and identify those priority foreign country practices, the elimination of which is likely to have the most significant potential to increase U.S. exports. The USTR is also required to report to the Senate Finance Committee and the House Ways and Means Committee on any such practices. The USTR may also cite in the report practices that may warrant identification in the future or that were not identified because they are already being addressed and progress is being made toward their elimination. Within 21 days after the report is submitted, the USTR must initiate Section 301 investigations into any priority foreign country practices identified in the report.